



November 19, 2002

Ms. Laura McElroy
General Counsel
State of Texas Board of Pardons and Paroles
209 West 14th Street, Suite 500
Austin, Texas 78701

OR2002-6592

Dear Ms. McElroy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172464.

The State of Texas Board of Pardons and Paroles (the "board") received a request for the medical records of a specified inmate. You contend that the Texas Department of Criminal Justice ("TDCJ") is "the custodian of the records and should be responding to any open records requests under the Public Information Act [(the "Act")] for prison records. . . ." In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.134, and 508.313 of the Government Code.

Initially, you assert that TDCJ is the custodian of the records at issue and should be the governmental body that responds to a request for such records. You state that "TDCJ Unit medical records were generated by electronic mail, and constitute a medical report of TDCJ, generated by the unit medical personnel where the inmate was housed at the time of the request (Connally Unit)" and that "the records are still under the care, custody, and control of TDCJ, even though they were transmitted to the Board staff." However, you further state that TDCJ is required to submit such records to the board so that the board may review the records "to make decisions on parole, clemency, and revocation of parole or mandatory supervision." Therefore, because the records at issue clearly have been collected, assembled, or maintained by the board in connection with the transaction of its official business, the board is obligated to comply with the Act in regard to a request for information it maintains. *See Gov't Code §§ 552.221, .301, .302.* Consequently, we will consider the applicability of the exceptions you raised.

You contend that the submitted information is made confidential under the Medical Practice Act, (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). Based on our review of the submitted information and your arguments, we agree that the submitted information is subject to the MPA and may only be released accordingly. As we are able to make this determination, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 172464

Enc: Submitted documents

c: Mr. Patrick E. Price
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(w/o enclosures)